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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1337

BARBARA GUTMACHER GIRARD,

Petitioner,

against

94TH STREET AND FIFTH AVENUE CORPORATION, LAWRENCE WILKINSON, JOHN H. STOOKEY and THOMAS E. MURRAY,

Respondents.

PETITIONER'S REPLY BRIEF

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BLEED THROUGH

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POINT VI

Because the Civil Rights Act of 1871 provides federal remedies supplementary to state remedies, Barbara Gutmacher Girard's complaint in the Federal Court is not barred by doctrines of *res judicata* or collateral estoppel.

Barbara Gutmacher Girard did not bring her claims of sexual discrimination in the state courts. She did not have to do so.

Nor did her failure to bring her federal claims in the state courts constitute a waiver. As a matter of law, a waiver of constitutional rights is not to be presumed. As a matter of fact, Barbara Gutmacher Girard did not waive any of her rights. See, *e.g.*, *Herendeen* v. *Champion Int'l Corp.*, 525 F. 2d 130 (2d Cir. 1975); *Lombard* v. *Board of Education*, 502 F. 2d 631 (2d Cir. 1974).

Circuit Judge Oakes, in his dissenting opinion, has this persuasive analysis:

> "Appellees have argued that this suit is barred by the res judicata effect of a prior state court action brought by appellant against these same appellees. In the state court litigation, however, appellant merely contended that the appellees' refusal to assign to her the shares of the corporation owned by her former husband was in breach of the lease agreement and state corporations law. No violation of civil rights was alleged in the state court action, and the state judge, in ruling against appellant's claim, stated only that appellees have the right to refuse to consent to the transfer of a cooperative lease for any reason 'except, of course, those prohibited by the Civil Rights Law.' *Girard* v. *94th Street and Fifth Avenue Corp.*, Civ. No. 15173/73 (Supreme Court, New York County, July 8, 1974) (memorandum opinion). Only the other day, in *Herendeen* v. *Champion International Corp.*, No. 75-7083 (2d Cir. Nov. 10, 1975), slip op. 483, we held under New York law that where a plaintiff in a second suit sets forth 'an independent claim of defendant wrongdoing' the first suit does not bar the second even though the plaintiff 'could have joined' the second suit claim with the first. *Id.* at 489-91. While Mrs. Girard could have joined her civil rights claim in her state court suit she did not do so. She is not barred, therefore, from asserting it now." App. II, at p. 32 n. 6.

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Conclusion

The Court should grant this petition for a writ of certiorari for a number of reasons, not the least of which are that the Second Circuit's decision is inconsistent with this Court's decisions and contrary to the decisions of the Third, Fifth, Sixth and Eighth Circuits.

Respectfully submitted,

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